Glebe Electric, Inc. and Aneco Company, successor employer *and* International Brotherhood of Electrical Workers, Local Union 756, AFL–CIO. Case 12–CA–13329–3

June 15, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On September 21, 1990, Administrative Law Judge Lawrence W. Cullen issued the attached decision. Respondent Aneco filed exceptions and a supporting brief,[1] and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order, and to adopt the recommended Order as modified and set forth in full below.

The judge found from unrebutted evidence that Respondent Glebe's officials threatened, interrogated, and discharged Glebe employees in violation of Section 8(a)(1) and (3) of the Act.[2] He further found Respondent Aneco to be a *Golden State*[3] successor to Glebe and thus jointly and severally liable for remedying Glebe's unfair labor practices, even though Aneco did not contract with Glebe to acquire either its assets or business. Aneco has excepted to the judge's findings against it, and we find merit in those exceptions.[4]

Evidence Concerning Successorship

Undisputed evidence shows that in August 1989,[5] Glebe decided that it would go out of business, and that it would not complete the fifth and final phase of its electrical subcontract on a hospital addition and renovation job for general contractor Centex-Rodgers (Centex). The basis for this decision was that it was losing money and could not afford to renew its construction bond in September, a precondition for completing the hospital project. Glebe President Peter Bourassa and Vice President Mario Garcia met with Robert Taylor, president of Aneco, another electrical contractor,[6] to offer Glebe's business for sale to Aneco.[7] Taylor declined the offer, saying that Glebe had nothing of value to sell. Taylor was then informed that Glebe expected to leave the hospital project around Labor Day, and there was a possibility that Aneco could take over and complete the electrical work on that job. Aneco thereafter reviewed the blueprints of the hospital job and determined that there was approximately $130,000 worth of work left in the electrical subcontract, which in the context of Aneco's operations, was a small project. However, Aneco considered taking on the job in the hope of obtaining future work from Centex.[8]

On August 11, the Union wrote Aneco, addressing it as the purchaser of Glebe's business, to advise it that a complaint had issued against Glebe in Case 12–CA–13329–3, and to warn that Aneco would be held accountable for Glebe's unfair labor practices. Aneco consulted with its attorney about the Union's letter and was informed by Glebe officials that Glebe was taking care of those charges. On August 25, Aneco entered into a contract with Centex[9] to complete the final phase in accordance with terms identical to those in Centex's original subcontract with Glebe.[10] On the same day, Centex and Glebe modified their contract to relieve Glebe of its performance obligations and to authorize Centex to hold back $30,000 of the original contract price to cover Glebe's potential warranty liability.[11]

Glebe went off the hospital job just before Labor Day,[12] and a few days later Aneco resumed the electrical contract work for Centex. Aneco hired an 11-man crew: two of its own employees, seven former Glebe employees, all of whom had worked at the job-

[1] Aneco's requests for oral argument are denied because the record, the exceptions, and briefs adequately present the issues and the positions of the parties.

[2] No exceptions were filed to these findings.

[3] *Golden State Bottling v. NLRB*, 414 U.S. 168 (1973).

[4] In light of our disposition of the successorship issue, we find it unnecessary to address Respondent Aneco's contention that it was denied due process because it had insufficient notice to defend against a nonpurchase theory of successorship.

[5] All dates refer to 1989.

[6] At the time, Aneco had five offices and approximately 315 employees working on various projects throughout the State of Florida.

[7] At this time, Glebe also had one or two other construction projects on which it was working. The record does not indicate whether Glebe's offer to Aneco involved any aspect of these other projects.

[8] Aneco had previously sought work from Centex without success.

[9] Aneco declined to accept a faxed assignment of Glebe's subcontract from Centex. The Aneco-Centex contract's sole reference to Glebe reads:

> CRCC [Centex] has agreed with Glebe Electric for Aneco Electrical Contractors to complete all remaining electrical work at J-1153, Memorial Hospital, Ormond Beach, Florida, effective on or about September 5, 1989. Aneco and Glebe have agreed on an amount of $130,902 for this work.

[10] Centex was adamant in its position not to pay Aneco a ''dime more'' than the amount left in the original subcontract.

[11] Centex agreed not to require a bond from Aneco but to hold back moneys from Glebe because of Aneco's refusal to accept liability, or put its bonding company at risk, for the work performed by Glebe.

[12] It is unclear when Glebe went out of business entirely. Although the total complement of Glebe employees at this time is unknown, the evidence does indicate that Glebe employed an average of about 35 employees and that during the summer of 1989 it was engaged in other jobs.

site, and former Glebe supervisors Drummond and Lowdermilk.[13] Aneco hired only those Glebe employees who applied for employment. Aneco did not pay any money to or purchase any assets from Glebe. However, it occupied two construction trailers at the hospital site which Glebe had abandoned. Aneco continued to provide the former Glebe employees the same terms and conditions of employment as had Glebe.

The Judge's Findings

The judge found that Aneco's continuation of Glebe's electrical work on the hospital project without interruption, and with essentially Glebe's same work force, supervision, and working conditions constituted substantial continuity between the two enterprises,[14] and that Aneco's prior notice of Glebe's unfair labor practices subjected Aneco to liability for remedying them.[15] Finally, the judge rejected Aneco's contention—that it should not be held accountable for the unremedied unfair labor practices because it did not purchase Glebe's business—citing Board decisions in which nonpurchaser successors were found jointly and severally liable for their predecessor's wrongdoings.[16]

Contentions of the Parties

Aneco denies being a *Golden State* successor, arguing that its contract with Centex for a discrete new phase of construction was not a continuation of Glebe's business, that it could not have negotiated a reduced purchase price, and that its lack of any contractual relationship with Glebe precluded any opportunity for it to protect itself from liability through negotiation for an indemnification clause. Aneco further points out that the retained former Glebe employees were not misled into believing that their employment would go beyond Aneco's contract with Centex. Aneco claims that the net effect of the judge's decision is to improperly signal prospective employers to avoid successor liability by refusing work begun by another employer or by blacklisting that employer's employees.

The General Counsel argues that although ''no purchase per se'' is required to impute liability to the successor under Board precedent,[17] Aneco had, but did not avail itself of, the same opportunity to protect itself against potential liability in the contract price with Centex or by an indemnification agreement from Glebe.[18] Moreover, the General Counsel contends that Aneco should be liable because it became ''the beneficiary of [Glebe's] unremedied unfair labor practices,''[19] i.e., (1) a desired contract relationship with Centex, (2) the profit from the subcontract itself, and (3) a jobsite free of a union organizational drive which Glebe had stifled.

Discussion

The issue in this case is whether Aneco has the responsibility to remedy the unfair labor practices previously committed by Glebe. That issue turns solely on whether Aneco is a *Golden State* successor, as opposed to whether it might qualify as a successor for other purposes and under other precedent. As the Supreme Court stated in *Howard Johnson Co. v. Detroit Joint Board*, 417 U.S. 249, 262–263 at fn. 9 (1974):

> [T]he real question in each of these ''successorship'' cases is, on the particular facts, what are the legal obligations of the new employer to the employees of the former owner or their representative. The answer to this inquiry requires analysis of the interests of the new employer and the employees and of the policies of the labor laws in light of the facts of each case and the particular legal obligation which is at issue, whether it be the duty to recognize and bargain with the union, the duty to remedy unfair labor practices, the duty to arbitrate, etc. There is, and can be, no single definition of ''successor'' which is applicable in every legal context. A new employer, in other words, may be a successor for

[13] Aneco hired two other former Glebe employees for a project in Seminole County and former Glebe Vice President Garcia, who had not worked on Glebe's hospital project, to work in Aneco's Miami office. In fact, Garcia served as Aneco's project manager for the hospital job for 2 months before moving to the Miami office.

[14] Citing *Aircraft Magnesium*, 265 NLRB 1344, 1345 (1982), enfd. 730 F.2d 767 (9th Cir. 1984); and *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).

[15] Citing *Golden State*, supra, in which the Supreme Court adopted the Board's remedy in *Perma Vinyl Corp*., 164 NLRB 968 (1967), enfd. sub nom. *United States Pipe Co. v. NLRB*, 398 F.2d 544 (5th Cir. 1968), holding a successor with knowledge of its predecessor's violations liable for them.

[16] Citing *Am-Del-Co*, 234 NLRB 1040 (1978), which noted at 1044 fn. 12:

> the Board has indicated that the principle [of holding a bona fide purchaser liable for remedying a predecessor's unfair labor practices] also applies where the successor is a replacement with no direct relationship or dealings with the predecessor. *Mansion House Center Management Corporation*, 208 NLRB 684 (1974); *Eastman Kodak Company, et al*., 194 NLRB 220 (1971).

[17] Citing *Hot Bagels & Donuts*, 244 NLRB 129, 131 (1979); *Ponn Distributing*, 232 NLRB 312 (1977); *Am-Del-Co, Inc*., 234 NLRB 1040, 1044 (1978); *Evans Plumbing Co*., 278 NLRB 67 (1986), enfd. 810 F.2d 1089 (11th Cir. 1987); *Martin J. Barry Co*., 278 NLRB 393 (1986).

[18] The General Counsel asserts that although the money paid to Aneco came from Centex rather than Glebe, the amount Centex paid to Aneco to complete the hospital job was deducted from Glebe's subcontract.

[19] Citing *Perma Vinyl*, supra at 969. The General Counsel additionally cites *Eastman Kodak Co*., 194 NLRB 220, 227 (1971), and *Ponn Distributing*, supra, as examples of the Board's ordering liability against employers who became successors involuntarily and without any realistic possibility of indemnification, and argues therefrom that imposing liability on Aneco for voluntarily assuming Glebe's subcontract is justified.

some purposes and not for others. [Citations omitted.]

We accordingly note at the outset the absence of any allegation that Aneco is a *Burns* successor, i.e., one who has a duty of its own to bargain with the Union. We do not address that separate issue, and place no reliance on the parties' and the judge's citations to authority pertinent only to the *Burns* issue of successorship.[20]

For the reasons which follow, we find that on the facts of this case there is insufficient basis either under the principles set forth in *Golden State* or the Board's subsequent application of those principles to warrant imposition of liability on Aneco for remedying Glebe's unfair labor practices. We start by examining the Supreme Court decision in *Golden State.*

In *Golden State*, the Supreme Court upheld the Board's ruling that a purchaser, who had acquired an enterprise with knowledge of the seller's unremedied violations, was jointly and severally liable for the seller's wrongdoing. In terms much like those subsequently expressed in *Howard Johnson*, above, the Court explained that in finding a bona fide purchaser-successor liable for remedying the known unfair labor practices of the seller-predecessor it was striking a balance among the legitimate conflicting interests of (1) bona fide successors, (2) the affected employees, and (3) the public. In considering the legitimate interests of the successor, the Court adopted the Board's requirement that in order to be liable, the successor must be on notice of the predecessor's prior unfair labor practices. It thereby agreed with the Board's rationale in *Perma Vinyl*, supra, that a purchaser-successor who is on notice is in the best position to redress the violations without being unduly burdened because it has the ability to reflect its potential liability in the purchase price from, or other indemnification by, the offending seller.[21] In assessing the interests of the affected employees, the Court noted the expectation of employee-victims of unfair labor practices that the violations be remedied, and the likely perception that a successor employer which has acquired the assets of the predecessor-wrongdoer should also be responsible for remedial action. In the absence of an effective remedial obligation, the Court noted the possibility of labor unrest to force the successor to remedy the violation, and the possibility that a successor's labor policies may be identified with that of the predecessor and may result in a continuing deterrent effect on the employees' union activities. Finally, the Court noted the statutory interests in avoiding labor strife, the chilling of the exercise of employees' Section 7 rights, and the protection of victimized employees.

Although some of the policy considerations mentioned in *Golden State* which favor making a successor remedially liable are present in this case,[22] a close examination of the facts reveals that this case is distinguishable from those cited by the judge and the General Counsel in which *Golden State* principles have been applied.

The principal distinction between this case and those cited is the total absence of any business relationship between Glebe and Aneco. The facts show that Aneco held one meeting with Glebe in August, in which it ascertained that Glebe had nothing of value to sell and would be going out of business around Labor Day without completing its electrical subcontract for Centex.[23] Aneco decided to approach Centex directly concerning the possibility of its completing the electrical work on the hospital project. Inasmuch as Aneco was already known to Centex, it did not need any introduction or assistance from Glebe in approaching Centex about the hospital job; and in fact it received none. Aneco's only further contact with Glebe was its inquiry about the unfair labor practice complaint against Glebe, which it was told was being taken care of by Glebe.

Aneco's dealings with Centex similarly reflect Aneco's lack of business relationship with Glebe. Thus, Aneco met with Centex, reviewed the blueprints, and acceded to Centex's insistence that the price of completing the hospital electrical work would not exceed ''by a dime more'' the approximately $130,000 left in the original contract.[24] Aneco, in arranging

[20] Therefore, we in no way disturb *Burns* successorship precedents, such as *Houston Building Service*, 296 NLRB 808 (1989), enfd. 936 F.2d 178 (5th Cir. 1991), cert. denied S.Ct. No. 91–597 (Feb. 24, 1992).

[21] The Court referred to indemnification as a common device in commercial law for protecting corporate purchasers from known or unknown potential liability associated with transfers of businesses, and noted that Golden State had given such an indemnification to its purchaser.

[22] Such as the interests of the victims of Glebe's unfair labor practices and the uncertainty whether its assets are sufficient to provide a monetary remedy for the employees who suffered a loss of earnings or benefits as a result of its unlawful conduct.

[23] The only relevance to Aneco of Glebe's going out of business before finishing the hospital job is that it presented Aneco with a fortuitous opportunity to establish a working relationship with Centex, which, as noted, Aneco had previously attempted to do without success.

[24] We find that the statement in the Aneco-Centex contract, that ''Aneco and Glebe have agreed on an amount of $130,902 for this work,'' is a reference only to the fact that Centex separately contracted both with Aneco and with Glebe for the performance of the work in question at a uniform price.

Our dissenting colleague argues that tripartite negotiations were held among Glebe, Aneco, and Centex. He bases this claim on the ''parallelism'' in Aneco's and Glebe's separate agreements of August 25 and vague record references to summer conversations between officials of Glebe and Aneco as well as their concurrent presence on August 25. In fact, there is neither specific testimony about the nature of those conversations between Glebe and Aneco nor evidence concerning the purpose of their presence on August 25, apart

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terms with Centex, specifically declined to accept an assignment of Glebe's subcontract with Centex, and also refused to become a surety for any portion of the already completed portion of the electrical subcontract.[25]

We find that the lack of any business relationship between Aneco and Glebe is the crucial factor in this case. It belies the General Counsel's contention that Aneco could have, in its dealings with Glebe, insulated itself from liability for Glebe's unfair labor practices. We likewise find no merit in the General Counsel's implication that Aneco could somehow have looked to Centex for indemnification or other consideration for potential liability arising from Glebe's unfair labor practices. As earlier noted, the *Perma Vinyl* rationale adopted by the Court in *Golden State* for holding a purchaser responsible for the seller's unfair labor practices is predicated on the purchaser's ability to reflect that potential liability in the negotiated purchase price or through indemnification by the seller. *Golden State*, supra at 185.[26] Further, in light of the absence of a business relationship between Aneco and Glebe, we do not attach special significance to the fact that former Glebe employees constituted a majority of Aneco's work force on the hospital job, although we note that that factor would be relevant with respect to other successorship issues not raised here.

Although the General Counsel accurately contends that Board precedent following *Golden State* has imposed remedial liability on employers that had not purchased the assets or business of predecessors who had engaged in unfair labor practices, each of those cases is distinguishable.[27] Thus, in the cases cited below at footnote 27, unlike the instant one, some pecuniary or security interest existed between the successor and predecessor which served as a substitute for a purchase. Taking our cue from those cases, we find that some such interest or relationship, or some other clearly identifiable and connecting interest, is critical to establish a *Golden State* successorship and thereby visit liability on one employer for another's unfair labor practices; and we find that the Board cases discussed below that were cited by the General Counsel or the judge are not to the contrary.

One such case, *Eastman Kodak*, supra, is inapposite for the simple reason that there the Board never passed on the judge's findings of successorship because it dismissed the underlying 8(a)(3) violation which he found and to which he addressed his remedial successorship discussion and findings. Indeed, the only successorship reference made by the Board is contained in the first paragraph of its decision in which, in setting forth the procedural history of the case up to that point, the Board merely recited that the judge found that Eastman-Caddo, as the successor of Hudson-Hychem, was responsible for remedying the latter's unfair labor practices. Nowhere in the substantive portion of its decision did the Board so much as mention successorship. In any event, final proof that the Board did not reach the successorship issue considered by the judge, and that the single reference to it was but a recitation of part of the case's history, is that the Board's Order was directed solely at Hudson-Hychem and its 8(a)(1) interrogation and threat of reprisal violations. Thus, we find that *Eastman Kodak* does not have any precedential value for finding a *Golden State* successor.[28]

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from signing their separate agreements with Centex. In these circumstances, we find that such ''parallelism'' in the written agreements is more readily explained by Centex's ability to set the terms of each agreement regarding a single construction project. In any event, our dissenting colleague's suggestion that there was a tripartite negotiation or a business relationship between Glebe and Aneco appears to be based almost entirely on speculation rather than evidence.

[25] In light of Aneco's refusal to bond any portion of the work performed by Glebe, Centex elected to hold back $30,000 from Glebe to cover Glebe's potential warranty liability.

[26] Our dissenting colleague errs by reducing that rationale to a mere evidentiary factor and citing cases in support of that premise in which successors in the role of ''purchaser'' (which Aneco is not) are held liable for their seller's wrongdoing whether or not they exercised their right to obtain insulation through negotiation. We note in this connection that there is no contention that Centex has any obligation to remedy Glebe's unfair labor practices, and that it is thus Aneco's relationship with Glebe, if any, rather than its dealings with Centex, that is relevant in deciding Aneco's liability.

[27] See, e.g., *Hot Bagels*, supra (successor was former predecessor who returned as lessee after bank foreclosure because successor was personal guarantor on foreclosed loan, and who upon payment of the balance of the loan amount would acquire the property formerly owned by the predecessor); *Ponn Distributing*, supra (successor canceled its security interest, which Board found was analogous to a purchase, and retook distributorship); *Martin J. Barry*, supra at 394 fn. 4 (substantial reduction in management fee constituted effective payment for business). *Evans Plumbing Co.*, supra (predecessor and successor were alter egos).

[28] To the extent that earlier Board decisions indicate otherwise, we conclude that they represent a misconception of the Board's findings in *Eastman Kodak*. Assuming arguendo, however, that the Board adopted the judge's *Golden State* analysis sub silentio, *Eastman Kodak* is factually distinguishable. Eastman had contracted with Hudson to construct a plant for it, and when it terminated that contract, it resumed construction with Caddo, its own subsidiary, hiring Hudson's former employees and supervisors. The judge found that Eastman and Caddo constituted a single employer for purposes of the case, calling such entity, Eastman-Caddo. In light of that finding, and the facts supporting it, Eastman itself in effect succeeded Hudson as the contractor of its own building project and for its own business interests and benefit. In such circumstances, a sufficient business relationship or nexus exists between Hudson and Eastman-Caddo to support a *Golden State* successorship finding. That finding is also made apt by the finding of the judge that Eastman-Caddo used a former supervisor of Hudson who was implicated in Hudson's unfair labor practices and whom it hired, to convey to its employees, who were also former employees of Hudson, that it shared Hudson's aversions to unions. The likely effect of that action was to renew the impact of Hudson's unlawful conduct among Eastman-Caddo's employees, thereby making it a direct beneficiary of such conduct.

The General Counsel's reliance on *Mansion House Center Management*, supra, is also misplaced, because of the distinguishable factual situation in that backpay proceeding, as becomes evident by reading it in conjunction with its underlying unfair labor practice case, reported at 195 NLRB 250 (1972). The unfair labor practice decision reveals that Mansion House Center, a complex of apartment towers, office buildings, shops, promenades, and an underground garage, was both owned by Mansion House Center Management Corporation (Mansion House) and managed by that corporation when, in 1971, the unfair labor practices occurred and were committed by it and its garage lessee, Central Parking System of St. Louis, Inc. The backpay decision discloses only that Mansion House contracted its managing agent function to Remsco on August 1, 1972, and proceeds to find the latter a successor and thus hold both jointly liable for Mansion House's unfair labor practices. Because Mansion House, as the owner of the complex, maintained an ongoing relationship with Remsco as its managing agent, we do not find the Board's decision in the backpay case to have any precedential value as a per se application of *Golden State* liability to nonpurchasers.[29]

Finally, *Am-Del-Co*, supra, on which the judge principally relied, is also distinguishable. In particular, the judge and our dissenting colleague point to a footnote in the judge's decision in *Am-Del-Co* (234 NLRB at 1044 fn. 12) stating that ''the Board has indicated'' that *Golden State* successorship applies even in the absence of a purchase by the putative successor and citing *Mansion House* and *Eastern Kodak* for this proposition. We note, however, that the Board's own opinion focused solely on the question whether, at the time it took over a subcontracted delivery operation, Merchants had knowledge of the unfair labor practices committed by *Am-Del-Co*. It adopted without comment the judge's finding that Merchants was successor to *Am-Del-Co* with respect to this operation. Further, that footnote in the judge's decision was itself appended to a discussion of the issue whether Merchants had the requisite knowledge. Because, as explained above, *Mansion House and Eastern Kodak* provide no genuine precedential authority for the footnote proposition, we find its rationale less than persuasive. In any event, we believe it may properly be treated as dictum, because the holding in *Am-Del-Co* can be fully explained on other, solid grounds.[30]

To understand the Board's *Golden State* successorship finding in that case, it is necessary to review the underlying unfair labor practice proceeding against Merchants, reported at 230 NLRB 290 (1977), in which Merchants was found to be a *Burns* successor to Am-Del-Co. As found therein, Merchants submitted a proposal to become the replacement for an existing unionized delivery service for J. C. Penney Co. in the St Louis area by offering better service, lower cost and ''No unions''—by using owner-operators. As a reaction to this proposal, the unionized delivery service, Compton Service Co., formed an alter ego, Am-Del-Co, which submitted to Penney its own proposal to retain the delivery work based on making its drivers owner-operators, as was the case with Merchants' proposal. Although Compton/Am-Del-Co was initially successful in retaining Penney's work, the reorganization and attempted conversion of its employees to independent contractors, designed to enable it to operate nonunion, caused it to discriminatorily lay off many of its employees. During the unfair labor practice proceeding that ensued from that reorganization and conversion (225 NLRB 698), Penney canceled its delivery contract with Am-Del-Co and gave a new contract to Merchants that included an indemnification clause protecting Merchants from liability for Penney's, Compton's, Am-Del-Co's and their successors' unfair labor practices. Merchants proceeded to perform under this contract on a nonunion basis, using the former Am-Del-Co owner-operators, who, the Board found, were employees of Merchants and not independent contractors.[31]

[29] We note that, in the backpay case, Mansion House filed an answer asserting that its operation of the complex had been terminated. It also filed a motion seeking dismissal of the proceeding as to it on the ground that, on August 1, 1972, it had turned over control of the complex to Remsco and while it continued as a legal entity, it had no assets, real or personal. The motion was denied by an administrative law judge and the answer later was struck by the same judge. Consequently, Mansion House's assertions concerning its lack of assets and any questions these two legal documents may have raised as to whether Mansion House continued as owner, were never put to proof. In any event, even the assertions in the motion indicate that Remsco directly dealt with Mansion House in taking over the operation of the complex.

[30] We reject our dissenting colleague's charge that we are engaging in improper post hoc rationale. As explained above, the rationale on which our colleague would rely was a passing observation made by an administrative law judge at the beginning of her discussion of a dispute over whether a putative successor knew of the predecessor's unfair labor practices, and there is no indication in the Board's opinion that this footnote was a focus of the respondent's exceptions. As we show below, given the facts of the case, that statement was simply unnecessary to the decision.

[31] Our dissenting colleague concedes as he must that the Board in *Am-Del-Co* did not give the backpay remedy that would be appropriate if a normal *Golden State* successorship were involved (i.e., a monetary recovery for all losses suffered as a result of the putative predecessors' unfair labor practices). The Board, adopting the remedy recommended by the administrative law judge, limited Merchant's liability to that of (1) reinstating the employees who had been discriminatorily laid off by Compton/Am-Del-Co to any vacant positions that might exist, or (2) placing them on a preferential rehire list if none existed. Backpay was limited to any that might accrue *after* Merchants made such a reinstatement offer. 234 NLRB at 1044–1045. The Board imposed a further limitation by providing that the reinstatement order was not to be construed as requiring Merchants ''to offer the discriminatees positions as drivers and helpers if it does not currently employ individuals in those job classifica-

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In light of the above, it is clear that Merchants was in no sense an uninvolved, disinterested employer in the congery of events that led to its becoming Am-Del-Co's successor under both *Burns* and *Golden State* principles. Its ''no-unions'' alternative to the initial Penney delivery arrangement with Compton, induced Penney to request an owner-operator bid from Compton and the latter to embark on its course of operating an owner-operator delivery service with its alter ego, Am-Del-Co, and unlawfully laying off its employees in order to retain the Penney contract. And Merchants itself was the ultimate beneficiary of its proposal and the events it had set in train when it obtained the Penney contract and unsuccessfully attempted to perpetuate the nonunion owner-operator operation that Am-Del-Co had first established. In such circumstances, Merchants initially played the role of catalyst and eventually that of principal in the string of events that included its predecessor's unfair labor practices—roles that Merchants itself appears to have realized left it vulnerable to future liability claims against it, as reflected by its negotiations of the broad indemnification clause in its contract with Penney.

The General Counsel's claim that Aneco was similarly a beneficiary of Glebe's unfair labor practices fails to recognize that the nexus that existed between Am-Del-Co and Merchants is essentially missing from the relationship of Glebe and Aneco. The General Counsel's assertions that, as a result of Glebe's unfair labor practices, Aneco obtained a desirable and profitable contract relationship with Centex is wholly without record support. It is apparent that Aneco's contractual relationship with Centex and profits, if any, resulted from Glebe's lawful cessation of business caused solely by its poor economic condition.[32] As for the General Counsel's additional claim that Aneco benefited from Glebe's unfair labor practices, we find in the circumstances of this case that any such benefit was at best of marginal significance, even from the perception of the seven former Glebe employees that Aneco hired. The record shows that Aneco extended direct employment offers to all Glebe employees who applied for employment; and there is no indication that the four former unlawfully discharged Glebe employees sought employment with Aneco on the hospital project or elsewhere.[33] Further, Aneco's assertion that the seven former Glebe employees hired to finish up the project had no reasonable expectation of employment with Aneco beyond completion of the hospital job is unrefuted. Consequently, to the extent that *Golden State* bases the liability of a successor on the employees' perception that there has been no change in the business operations between the predecessor and the successor, the facts here reveal that the former Glebe employees knew, or should have known, that Glebe had gone out of business, that Aneco had not actually acquired anything of substance from Glebe,[34] and that their jobs with Aneco were of finite, relatively short, duration. The residual impact of Glebe's unfair labor practices on the former Glebe employees was therefore limited and attenuated; and it was nonexistent as applied to the rest of Aneco's work force of over 300 employees employed at other locations. (The record does not indicate whether any portion of this work force is unionized.) Moreover, there is no indication that Aneco had ever engaged in activity indicative of union animus or otherwise took a position on organizing activity among its employees, including those working at the Centex site. In this context, we cannot find that Aneco derived any significant benefit from Glebe's unfair labor practices.

In sum, notwithstanding our agreement with the policy reasons enunciated in *Perma Vinyl* and *Golden State* for protecting victimized employees, we find that it would be imprudent to impose on Aneco liability for Glebe's unlawful conduct, given the lack of a material connection or relationship between the two. The imposition of such liability on Aneco would unfairly penalize it for offering employment to Glebe's former em-

tions to perform its delivery work for Penney.'' Because Merchants' contract with Penney involved only owner-operators so far as the judge's factual findings indicate, it would appear that Merchants had no obligation to offer the discriminatees their original positions unless it happened to convert its owner-operators to employees in the future or add employees to the owner-operator complement working on the Penney delivery contract. This can reasonably be viewed as an unusual remedy in an unusual case, given Merchant's role in inspiring the discriminatory layoffs and its lack of one or more of the elements normally present in a *Golden State* successorship.

Our colleague's contention that Merchant's actions did not result in what could properly be called a ''relationship'' between Merchant's and Compton strikes us as raising a semantic dispute. We agree that there was no ''relationship'' that would warrant a standard make-whole remedy in that case and, as noted, the Board gave none. We disagree that Merchant's indisputably more active role there in suggesting that the job in question be done with nonunion labor fails to distinguish that case at all from this. We regard *Am-Del-Co* as simply an unusual case in which a correspondingly unusual remedy was given. For the reasons stated in fn. 33 below, we see no compelling reason for granting a similar remedy here.

[32] No claim is made in this proceeding that Glebe's unfair labor practices had any influence on its decision to cease operations.

[33] Because Aneco hired all who applied and because it was offering the same terms and conditions that the former employees had enjoyed with Glebe, the discriminatees had a much greater inducement for seeking employment here, than did those in *Am-Del-Co,* in which, as noted (fn. 31, supra), the putative successor had supplanted the predecessor with a nonunion operation using owner-operators. Indeed, compared with the discriminatees in *Am-Del-Co* who, under the Board's order, could secure positions substantially similar to those from which they were discharged only if Merchants chose to incorporate driver and helper job classifications in its transport operations for Penney, the employees unlawfully discharged by Glebe who chose not to apply to Aneco hardly seem helpless victims for whom Aneco should now bear backpay liability.

[34] There is some indication in the record that tools which formerly had been Glebe property were acquired directly by the former Glebe employees.

ployees on an individual basis, when it never had an obligation to hire the employees of Glebe.[35] Finally, we reject a per se approach that would impose *Golden State* liability on Aneco or any other construction subcontractor, merely because it replaced the offending subcontractor on a construction project. The imposition of such derivative liability would unfairly encumber the ability of a general contractor in that particular situation to obtain a subcontractor to complete the overall construction project, and would likely cause a subcontractor to forgo hiring the former employees of the other contractor.

Accordingly, we cannot discern any statutory policy or public interest or any other equitable basis for holding Aneco liable for Glebe's violations, and we shall modify the judge's recommended Order and notice by deleting any reference to liability against Aneco.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below, and orders that the Respondent, Glebe Electric, Inc., West Palm Beach, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unlawfully interrogating employees concerning their union membership and sympathies.

(b) Threatening employees with unspecified reprisals because of their engagement in union activities.

(c) Threatening employees with the futility of their support for the Union.

(d) Discharging and refusing to reinstate employees because of their engagement in union activities.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unlawful discharges of Daniel A. Reuther, George C. Hopper, Stephen A. Perry, and Joshua A. Raver Jr., offer them full reinstatement to their former positions or to substantially equivalent positions if their former positions no longer exist, and make them whole for all loss of wages and benefits sustained by them with interest and full restoration of all seniority rights and privileges as set out in the remedy section of this decision.

(b) Remove from its files any reference to the unlawful discharges and inform the employees in writing that this has been done and that the unlawful discharges will not be used against them in any manner.

(c) Preserve and, on arequest, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel record and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its office in Ormond Beach, Florida, and its home office in Miami, Florida, copies of the attached notice marked ''Appendix.''[36] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

MEMBER RAUDABAUGH, dissenting.

My colleagues have refused to grant any meaningful remedy to the discriminatees. As discussed below, there is clear precedent for granting such a remedy. In addition, as also discussed below, I believe that such a remedy would not place a significant burden on the successor employer. Hence, I dissent from the majority's failure to grant a meaningful remedy.

In brief, the facts are as follows. In 1989, Glebe was the electrical subcontractor on a hospital construction project. The general contractor was Centex. The fifth and final phase of the electrical subcontract was scheduled to begin in September. Glebe was losing money and could not afford to post the construction bond which it needed to post in order to continue working. Its officials determined in August to cease doing business. They approached Aneco's president directly about purchasing Glebe's business. He declined, based on the observation that Glebe had nothing of value to sell. Aneco later refused to accept from Glebe a purported assignment of the subcontract. On August 14, Aneco received notice from the Union that a complaint had issued against Glebe and that the Union would hold Aneco accountable for Glebe's unfair labor practices. On August 25, Centex and Aneco contracted for Aneco to complete the work for $130,902. On the same day Centex and Glebe modified their contract. The modification reduced the amount of their original contract by $130,902. In both contracts, the figure of

[35] See *Burns*, 406 U.S. at 280 fn. 5, noting that the successor employer has an obligation only to provide offers of employment on a nondiscriminatory basis.

[36] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

$130,902 was said to have been agreed on by Aneco and Glebe.

Aneco commenced work at the hospital jobsite in early September. It employed a work crew of two current Aneco employees along with seven former Glebe employees and two former Glebe supervisors who had been working at the hospital site. This work crew continued to perform the same electrical work in the same manner and under the same terms and conditions of employment prevailing when Glebe performed the work.

The crux of the controversy about Aneco's alleged successorship is the undisputed fact that it did not purchase any assets directly from, or pay any money directly to, Glebe. In successorship cases where the issue concerns imposition of a continuing bargaining obligation, the law does not distinguish between bona fide purchaser situations[1] and situations in which one business entity replaces another as a subcontractor without any transaction between the two.[2] In successorship cases where the issue concerns imposition of remedial liability, the seminal *Perma Vinyl*[3] and *Golden State*[4] cases both involved bona fide purchasers. However, the Board has subsequently held that such successorship does not depend on contractual privity, or indeed any relationship, between the successor and the predecessor. In *Am-Del-Co*, 234 NLRB 1040, 1044 fn. 12, the administrative law judge's opinion stated that: ''Although *Golden State* involved a bona fide purchaser successor, the Board has indicated that the principle also applies where the successor is a replacement with no direct relationship or dealings with the predecessor.''[5] The Board did not indicate any disagreement with this statement in adopting the judge's decision.

Relying on traditional evidentiary factors relevant to the analysis of continuity of the employing entity, the judge here found that Aneco was a successor. Relying on *Am-Del-Co*, he rejected Aneco's argument that it could not be a *Golden State* successor because it was not the bona fide purchaser of Glebe's business. Accordingly, the judge found that Aneco had joint and several liability for Glebe's unfair labor practices.

The majority opinion clearly and accurately summarizes the reasons set forth in *Golden State* and *Perma-Vinyl* for imposing liability on a successor which has prior knowledge of a predecessor's unlawful conduct and which, viewed from the perspective of affected employees, continues the operations of an employing entity in an essentially unchanged manner. In reversing the judge, however, the majority holds that some ''pecuniary or security interest . . . or some other clearly identifiable and connecting interest, is critical to establish a *Golden State* successorship and thereby visit liability on one employer for another's unfair labor practices.'' My colleagues are less than clear in explaining why the Board should so limit an important equitable, remedial doctrine. However, two assertions appear paramount: (1) they assert that *Am-Del-Co* and related precedent involve situations in which there is some nexus between the successor and the predecessor; (2) they assert that the lack of any business relationship between Glebe and Aneco precluded the latter from protecting itself against monetary liability for the former's unfair labor practices.

As to the first assertion, the simple fact is that there was no nexus between predecessor and successor in *Am-Del-Co*. Predecessor Compton (a unionized company) made deliveries for J. C. Penney. Merchants told Penney that it could do the same work on a cheaper, nonunion, owner-operator basis. Compton then sought to retain the delivery business by forming an alter ego, Am-Del-Co. In the process, Compton/Am-Del-Co committed unfair labor practices. Penney thereafter terminated its relationship with Compton/Am-Del-Co and brought in Merchants to perform the delivery work. Based on these facts, the judge found: ''There is no relationship between Respondent [Compton/Am-Del-Co] and Merchants, and they have never had any business dealings with each other.'' Indeed, it was that finding that prompted the judge to cite the principle, noted above, that a relationship is not a necessary predicate for remedial successorship. Perhaps in recognition of this fact, the majority here seeks to supply a post hoc rationale for *Am-Del-Co*. It relies on the fact that Merchant's competitive bid to perform Penney's delivery business on a nonunion, owner-operator basis ''induced'' the predecessor to unlawfully convert unit employees to independent contractor status. The post hoc rationale does not withstand scrutiny. The fact that Merchants' bid may have prompted Compton to engage in unlawful conduct does not establish, or even suggest, a relationship of any kind between Merchants and Compton. In sum, the majority has read into *Am-Del-Co* a rationale that is not expressed there, and that rationale does not withstand scrutiny. Furthermore, that rationale is without precedent or statutory support.

As to my colleague's second assertion, the ability of a successor to insulate itself against potential monetary liability was an evidentiary factor relied on by the Court in *Golden State*.[6] However, the Court did not in-

[1] E.g., *Fall River Dying Corp. v. NLRB*, 482 U.S. 27 (1987).

[2] E.g., *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).

[3] 164 NLRB 968 (1967), enfd. sub nom. *United States Pipe Co. v. NLRB*, 398 F.2d 544 (5th Cir. 1968).

[4] *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973).

[5] The judge cited two cases for this proposition. *Mansion House Management Corp.*, 208 NLRB 684 (1974); *Eastman Kodak Co.*, 194 NLRB 220 (1971).

[6] ''[The successor's] potential liability for remedying the unfair labor practices is a matter which can be reflected in the price he pays for the business, or he may secure an indemnity clause in the

dicate that this factor was a prerequisite to the imposition of monetary liability on a successor. Indeed, subsequent precedent indicates that the presence of this factor is not a prerequisite to a finding of monetary liability on the part of the successor.[7] However, there is no need to rely on, or even adopt, this precedent in the instant case. For, as explained below, the remedy that I would order, consistent with *Am-Del-Co*, does not impose a monetary liability on Aneco unless Aneco fails to honor a Board order to reinstate the employees.

In *Am-Del-Co*, as noted above, there was no relationship between the predecessor and successor. Further, the successor did not hire all the predecessor's work force. Hence, it could not be said that, absent the 8(a)(3) discharges by the predecessor, the discriminatees would have been hired by the successor. Because of these circumstances, the Board simply ordered the successor to offer the discriminatees reinstatement to their former or substantially equivalent positions. If there were no such positions, the successor had to place them on a preferential hiring list and hire them when positions became available. As to backpay, there was no liability if the successor reinstated the employees or placed them on a preferential hiring list as ordered.

Similarly, in the instant case, there is no relationship between the predecessor and successor. In addition, the successor did not hire all the predecessor's employees. Hence, it cannot be said that, absent the 8(a)(3) discharge by the predecessor, the discriminatees would have been hired by the successor. Accordingly, I would order the remedy ordered in *Am-Del-Co*.[8]

In view of this remedy, it is not critical to determine whether Aneco could have been protected from potential monetary liability. For, as discussed above, there will be no monetary liability at all if Aneco offers the discriminatees employment in an appropriate position.

In sum, Aneco took over the job that Glebe had performed and Aneco had notice of Glebe's unfair labor practices. In these circumstances, it is clear that Aneco was a successor for remedial purposes. The *extent* of a successor's remedial obligation may vary from case to case. In the instant situation, I would impose only the narrow remedy imposed in the analogous case of *Am-Del-Co*. That remedy: (1) gives some relief to the victim of discrimination; (2) imposes no monetary liability on the successor unless it disobeys a Board order; (3) imposes no other hardship on the successor; it simply tells the successor that, if there be an appropriate job, it should go to the discriminatee rather than someone else.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT interrogate you concerning your membership in a union or your union sympathies.

WE WILL NOT threaten you with unspecified reprisals because of your engagement in union activities or other protected concerted conduct.

WE WILL NOT threaten you with the futility of support for a union.

WE WILL NOT discharge you because of your engagement in union activities or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under Section 7 of the Act.

WE WILL offer Daniel A. Reuther, George C. Hopper, Stephen A. Perry, and Joshua A. Raver Jr. immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially

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sales contract which will indemnify him for liabilities arising from the seller's unfair labor practices.'' 414 U.S. at 185.

[7] E.g., *Bellingham Frozen Foods*, 237 NLRB 1450, 1466 fn. 26 (1978), enf. denied on other grounds 626 F.2d 674, 681 (9th Cir. 1980); *Ponn Distributing*, 232 NLRB 312, 314 (1977). Cf. *Sheet Metal Workers Local 75 (Owl Constructors)*, 290 NLRB 381, 387 (1988).

[8] My colleagues are unsuccessful in their efforts to distinguish *Am-Del-Co*. First, they state that Merchants (the successor held liable in that case) employed only owner-operators and hence had no obligation to reinstate the discriminatees. However, the fact is that the Board ordered Merchants to reinstate the discriminatees if and when it had appropriate employee positions to offer. In the instant case, my order would do precisely the same thing, i.e., it would require Aneco to reinstate the discriminatees if and when it has appropriate employee positions to offer. Second, my colleagues assert that Merchants was responsible for ''inspiring'' the predecessor's discriminatory actions. However, the fact is that Merchants' predecessor, acting alone, engaged in these actions. The fact that the predecessor did so in order to win a competitive battle against Merchants is hardly a basis for suggesting wrongdoing on the part of Merchants. Indeed, there was not even a hint of a finding of wrongdoing by Merchants. To the contrary, there was a finding that there were no dealings or relationships between Merchants and its predecessor.

In sum, there is no principled basis for distinguishing Am-Del-Co. Accordingly, unless my colleagues wish to overrule that case, they should adhere to it.

equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed and will expunge from our files any reference to their unlawful discharges and notify them in writing of this and that their discharges will not be used against them in any manner.

WE WILL make employees whole for all loss of wages and benefits sustained by them by reason of our unlawful discharges of them, with interest.

Our employees have the right to join and support International Brotherhood of Electrical Workers, Local Union 756, AFL–CIO or to refrain from doing so.

GLEBE ELECTRIC, INC.

Michael Maiman, Esq., for the General Counsel.
J. Bruce Harper, Esq. (MacPherson, Harper, Kynes, Geller, Watson & Buford, P.A.), of Clearwater, Florida, for Respondent Aneco Company.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me on June 15, 1990, at Daytona Beach, Florida. The hearing was held pursuant to an amended complaint issued by the Regional Director for Region 12 of the National Labor Relations Board (the Board) on May 7, 1990. The complaint is based on an amended charge filed by the International Brotherhood of Electrical Workers, Local Union 756, AFL–CIO (the Union), on May 25, 1989. The complaint alleges that Respondent, Glebe Electric, Inc., (Glebe) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by interrogating its employees on or about March 28 and 29, 1989, regarding their union membership, activities, and sympathies and the union membership, activities, and sympathies of their fellow employees; and by on or about March 29, 1989, informing its employees that it would be futile for them to select the Union as their bargaining representative; and by threatening its employees with discharge on or about April 4 and 13, 1989; and by threatening its employees with unspecified reprisals on or about April 3, 1989; and by impliedly threatening its employees with discharge on or about March 31, and April 3, 1989; and by impliedly threatening its employees with unspecified reprisals by calling them troublemakers on or about March 31, 1989; and by on or about April 14, 1989, informing an employee that his discharge was caused by his activities on behalf of the Union, all the foregoing because of the union activities of the employees. The complaint also alleges that Glebe discharged its employees, Daniel A. Reuther, George C. Hopper, Stephen A. Perry, and Joshua A. Raver Jr., on or about April 4, 1989, because they joined, supported, or assisted the Union, and engaged in concerted activities for the purpose of collective bargaining or other unilateral aid or protection, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection, all in violation of Section 8(a)(1) and (3) of the Act. The complaint further alleges that on or about August 29, 1989, the Aneco Company (Aneco) purchased Respondent's business and assets, including a subcontract between Centex and Respondent, and since that date has continued to carry on the Respondent's business without interruption or substantial changes in the method of operation or employee complement. The complaint also alleges that prior to the foregoing, Aneco was put on notice of Glebe's potential liability in this case by certified letter from the Union to Robert K. Taylor, Aneco's president, on August 11, 1989, and that Aneco has accordingly continued the employing entity with actual notice of Glebe's liability to remedy its unfair labor practices, and is thereby a successor to Glebe. Respondent Glebe did not file an answer to the complaint or appear at the hearing. Respondent Aneco filed an answer dated May 18, 1990, wherein it stated it was without knowledge of the substantive allegations of violations of the Act and therefore denied them. It further specifically denied having purchased Respondent Glebe's business or assets or having purchased Glebe's contract with Centex and denied all allegations of successorship.

On the entire record in this proceeding, including my observations of the witnesses who testified herein, and after due consideration of the briefs filed by the General Counsel and Respondent Aneco, I make the following

FINDINGS OF FACT

I. JURISDICTION

A. *The Business of Respondent*[1]

The complaint alleges that at all times material herein, Respondent Glebe was a Florida corporation with an office and place of business in West Palm Beach, Florida, where it was engaged in the electrical contracting business and that in the course and conduct of its operations it provided services valued in excess of $50,000 for enterprises within the State of Florida, including Centex Rodgers Construction Company (Centex), each of which enterprises meets a direct standard for assertion of the Board's jurisdiction and that at all times material herein, Glebe has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

B. *The Labor Organization*

The complaint alleges that the Union was at all times material a labor organization within the meaning of Section 2(5) of the Act and I so find in reliance on the record in Case 12–RC–7139, a representation case wherein Glebe stipulated that the Union was a labor organization within the meaning of Section 2(5) of the Act.

Facts

Stephen Perry testified he was employed by Glebe as a journeyman electrician on February 12, 1989,[2] to work on the Memorial Hospital addition in Ormond Beach where

[1] Respondent Glebe filed an answer to the original complaint wherein it admitted the allegations with respect to service and filing of charges and jurisdiction, and I find them binding on said Respondent notwithstanding its failure to file an amended answer to the amended complaint. *Auburn Die Co.*, 282 NLRB 1044 (1987).

[2] All dates are in 1989 unless otherwise stated.

Glebe was an electrical subcontractor to Centex Rodgers. During his employment with Glebe, Perry was never reprimanded or disciplined and was complimented about his work by his foreman, Mack Pellicer, and Tim Drummond, the project supervisor, and by Pete Bourassa, the president of Glebe.[3] He also unexpectedly received a raise of 50 cents per hour on March 31. On Tuesday, March 28, the Union established an area standards picket line and Glebe's foreman, Tom Lowdermilk, asked him what his position was on the Union and Perry replied he was in favor of the Union.[4] On Wednesday, March 29, Lowdermilk again approached him and asked him what his position was on the Union. Perry again replied he was in favor of the Union. Lowdermilk then asked Perry whether he was a member of the Union and Perry replied that he was. Lowdermilk then said if the Union attempted to have an election, that Glebe would load the job with other Glebe employees from other jobs around the state to avoid a favorable result for the Union. Lowdermilk also said that Glebe would not sign a union contract.

Perry testified further that on Friday, March 31, he and employees Dan Reuther and George Hopper appeared on the job wearing union T-shirts with the Union Local's name on the front and the International Union's seal on the back of the shirts. They also handed out union information prior to the start of the workday. Foreman Lowdermilk approached Perry and employee George Hopper and held his hands above Hopper's head and told them they looked like puppets with their union shirts and asked where their strings were. Shortly thereafter that day, Lowdermilk again approached Perry and asked him if he did not like his job, why he did not quit. Perry responded he liked working there. On Monday, April 3, the employees handed out union literature prior to the start of the workday and Lowdermilk asked Perry why he did not quit because everyone was getting sick and tired of the things going on on the job. Later on that morning, Tim Drummond, the project supervisor with Glebe, appeared with a camera and began to take pictures of the work in the area. Perry inquired why he was taking the pictures and Drummond replied that the employees were doing substandard work. On Tuesday, April 4, Perry and other employees again showed up at the job with information about the Union. Project Supervisor Drummond told them that there was going to be a company meeting before they went to work. After the meeting, Drummond told Perry and employees Josh Raver, Dan Reuther, James Mack Pellicer, and George Hopper not to go to work. At that point, Bourassa exited from the job trailer and told Pellicer to return to work. He then handed the remaining employees Perry, Raver, Reuther, and Hopper their paychecks and told them they were fired for performing substandard work. Perry asked if this had anything to do with the Union and Bourassa replied in the negative.

James Mack Pellicer was also called by the General Counsel. He was hired as a foreman in February and left in April. On his recommendation, Perry was hired by Respondent Glebe. Pellicer who has 21 years' experience as a journeyman electrician and 15 years as a supervisor testified that Raver, Reuther, Hopper, and Perry, all of whom were assigned to his crew, did excellent work and had not been the subject of any disciplinary problems. On Tuesday, March 28, the Union posted a picket line in front of the hospital. At the end of the day, Owner Bourassa asked Pellicer whether he or any of his crew members were union and Pellicer replied in the negative, and Bourassa said ''I sure hope not.'' Earlier that day, Superintendent Drummond had told Pellicer that things were going well and the work was great and that he had put the employees up for a raise which they would get next week and that he was going to make Reuther a foreman. Pellicer testified that on Friday, March 31, three members of his crew, Perry, Reuther, and Hopper came into work wearing the Union's T-shirt. At that point, the employees who did not favor the Union went on one side of the parking lot and the prounion employees went on the other side of the parking lot and ''would not have anything to do with each other.'' On Monday, April 3, Superintendent Drummond came to the work area with a list of work errors he had allegedly found and took pictures of the electrical work Pellicer's crew had performed. Drummond had never done this before. Prior to March 31, he had received compliments on his work and that of his crew and he and his crew had received a raise in March. On the morning of Monday, April 3, a couple of hours after Drummond had taken pictures, Drummond called Pellicer off to the side and told him not to take it so hard as the work was 95 percent correct and not to worry about it. On Tuesday, April 4, when Pellicer arrived at work, Bourassa met him and said he was going to talk to everybody and he wanted Pellicer to hold his crew because he wanted to talk to them privately after everyone else went to work. He told Pellicer to go to work and get started and he would talk to him later and in response to a question by Pellicer as to whether this had anything to do with the Union. Bourassa answered in the negative. Pellicer left to go to work and later some of the other employees told Pellicer that Bourassa had fired all of his crew, consisting of Perry, Hopper, Reuther, and Raver. Bourassa then sent Pellicer two laborers who were not familiar with the work and Pellicer worked until noon when he told Bourassa he did not like what was going on and quit.

Daniel Reuther was also called by the General Counsel. Reuther was employed by Respondent Glebe from March until April. He had received a raise the last week of March. He had never been disciplined. He had received compliments on his work from Drummond and Lowdermilk. Drummond also told him he wanted to make him a foreman. On occasion, he worked directly for Drummond. He has been a member of the Union since November 1988. While employed by Glebe, he spoke to other employees at lunchtime on behalf of the Union. He also wore the Union's T-shirt the last couple of days he worked there. He also gave out union literature before work. On Tuesday, March 28, there was an informational picket outside the gate conducted by the Union. On that date, Drummond asked him why he had crossed the picket line if he were ''such a big union man.'' Lowdermilk said that Glebe would never go union.

[3] In its original answer, Glebe admitted the supervisory status of Bourassa and Drummond and I find them to have been 2(11) supervisors.

[4] The record establishes that Lowdermilk was a supervisor within the meaning of Sec. 2(11) of the Act. Specifically, Foreman Mack Pellicer testified that Lowdermilk did not carry tools, had a two-way radio as did Drummond and Pellicer only, discharged an employee, attended supervisory meetings, reassigned employees work, and could come and go as he wished and only Lowdermilk and Drummond had keys to the job trailer.

Lowdermilk asked him if he were in the Union and Reuther ''kind of skirted the issue at that time.'' On Wednesday, March 29, Lowdermilk again asked Reuther if he was in the Union. He told Lowdermilk he was interested in joining the Union and had studied their benefits and health insurance. On Friday, March 31, some of the employees wore the union T-shirts. On that day, Lowdermilk said he had nothing against the Union but that ''Glebe would never be in the union.'' On that day, Lowdermilk held his hands over Reuther's head and said that the prounion employees were union puppets. On Monday, April 3, Drummond came to their work area and was there for hours taking pictures of the work and when asked by the employees why he was taking pictures said ''shoddy workmanship.'' On Tuesday, April 4, all the employees signed into work and Drummond dismissed the crew to go to work and told several of the employees to stay behind. Pellicer came around and said this is about the Union, but Drummond denied this and told Pellicer to go to work. Then Bourassa came out of the trailer and gave them a check and told them to get out. On April 13, he and George Hopper were walking the picket line for the Union at the Memorial Hospital site and Lowdermilk came up against the chain link fence enclosing the jobsite and said, ''As far as I'm concerned, Glebe got rid of four good guys.''

The General Counsel also called Joshua Raver who was employed by Glebe from March 21 to April 4 as a journeyman electrician on the Memorial Hospital jobsite. During his 2-week period of employment, he received no discipline but rather was complimented about his work by his foreman, Pellicer, who said management was pleased with their work. He did not engage in any union activities while employed with Glebe. On Tuesday, March 28, the Union put up a picket line around the jobsite. On Friday, March 31, Drummond was taking pictures of the work performed by the crew on the west end. Earlier that morning, his fellow crew members Reuther, Hopper, and Perry were wearing union T-shirts. On April 4, he reported to work and Pellicer told him, Reuther, Hopper, and Perry to hang back and the other employees went to work and then Drummond told them they were being fired for faulty work and the four were handed a piece of paper and an envelope. At that time, Reuther and Hopper left and Perry was talking to Bourassa and Raver was talking to Drummond and said that he was not in the Union and asked why he was being fired and Drummond asked him whether he could prove that. Raver then turned to Bourassa and said this isn't fair and Bourassa said, ''I don't know who is or who isn't in the Union. I had to get rid of you all. Once this all blows over, please come back next week and reapply.'' Raver said, ''You can count on that sir and I left.'' On April 13, he approached Drummond on the west end and said he was there to talk about getting his job back. Drummond agreed and Raver asked him if he had any problem with his work. Drummond replied that Raver's work had seemed satisfactory to him and further stated that he had not expected the ''union matter to last as long as it had and he said he thought that I was caught up in something that was very unfair.'' Drummond also told him that since the union matter had come up he no longer had the power to hire and fire, that Bourassa was not there but would be in the following day, and to come in and talk to him. Raver returned the next day, April 14, and spoke to Drummond again who repeated that he had not had any problem with Raver's work but that he did not have time to worry about the union matter and that Bourassa was going to ask Raver questions about whether he had known anything about the Union and why he had not told Bourassa about it. He then saw Bourassa who said he was in a meeting and did not have time to talk. Later that day at the end of the workday, he approached Drummond and Bourassa. He asked Bourassa, ''Peter, what's the deal?'' Bourassa said, ''I can't do anything with you now. I had to get rid of you all. I didn't know who was who. I just got rid of you all.'' He told Bourassa that this was not fair. Bourassa said, ''Well I've got a lawyer, you talk to him.'' Raver then left.

The General Counsel also called George Hopper who was employed by Glebe between the end of January and April 4 as a journeyman electrician. He worked in Pellicer's crew the last month of his employment there. He received a raise the last week of March, had not received any discipline, and was complimented on his work by Drummond. He has been a member of the Union for about 3 years. On March 31, he, Perry, and Reuther wore union T-shirts to work. On Tuesday, March 28, the Union set up an informational picket line around the jobsite. On that day, Lowdermilk asked Hopper and Perry what they thought of the picket line. The question was directed at Perry and Hopper ''backed out of the conversation.'' On the next day, March 29, Lowdermilk approached Perry and Hopper and asked Perry ''if he was connected with the Union. Perry said the Union had good ideas and side stepped the question.'' That afternoon Lowdermilk again approached Perry and asked him if he was in the Union and Perry replied that he was. On Friday, March 31, when he, Perry, and Reuther wore the union T-shirts, Lowdermilk said he liked the shirts but didn't like the insignia on them and gestured like a puppet over Reuther's head and said, ''You all look like union puppets.'' On Monday, April 3, Drummond came out with a camera and was walking around taking pictures of work done on the west end of the building. Perry asked Drummond why he was taking pictures and Drummond ''just smirked at us and said he was taking care of us.'' On Tuesday, April 4, Drummond, Lowdermilk, and Bourassa came out of the trailer and told everyone to go to work but Hopper, Reuther, Perry, and Raver. Pellicer stayed behind and asked whether this was union related. Bourassa said it was not and told him to go to work. Bourassa then handed them their paychecks and termination slips. Raver inquired what it was about and Bourassa said, ''You are all fired, leave the property immediately or I'll call the police.'' He left. On April 13, he and Reuther were walking the picket line outside of the gate of the Memorial Hospital property and Lowdermilk stated that four good men had lost their jobs.

The General Counsel also called Robert Taylor, who had been the president of Respondent Aneco, Incorporated, for a week prior to the hearing as Aneco Company of which he had also been president was recently purchased. On October 12, 1989, Aneco was performing electrical work at the Memorial Hospital jobsite at Ormond Beach, Florida. This work had been commenced by Aneco on or about Labor Day. On August 25, 1989, Aneco entered into a contract with Centex-Rodgers, a general contractor to perform electrical work that Glebe had been obligated to perform under its contract with Centex-Rodgers as Glebe was going out of business. He had initially been contacted by Aneco's branch manager in West

Palm Beach, Florida, who told him that Glebe was going out of business and that Glebe wanted to know if Aneco wanted to buy them out. He replied that he did not want to buy them out but that he would talk with them. He met with Peter Bourassa and Mario Garcia who were the president and vice president of Glebe and they offered to sell Aneco their business. He declined. Aneco, an electrical contractor, had been attempting to obtain work with Centex-Rodgers, a large general contractor, but had been previously unsuccessful. He told Bourassa and Garcia that they had no business to buy. They told him there was a possibility Aneco could take over the job around Labor Day as there were several phases of the job and phase 4 would be completed around Labor Day and there would be one phase left to do. Aneco representatives went to the jobsite, examined the prints given to them by Centex-Rodgers and there was approximately ''one hundred thirty thousand and some odd dollars left in the job.'' Aneco reviewed it and determined they would undertake what was a small job in the hope they would get additional work from Centex-Rodgers in the future. On August 14, he reviewed a letter from the Union dated August 11, which talked about Aneco purchasing the business of Glebe and warned that Glebe had committed unfair labor practices for which Aneco would be held accountable. He reviewed the letter with his attorney. At one point during his negotiations with Centex, Taylor was faxed an assignment of Glebe's contract with Centex but he rejected the assignment because he did not wish to assume any liabilities of Glebe. There was no agreement between Glebe and Aneco. There was a contract between Centex-Rodgers and Aneco for Aneco to perform the electrical work on the Memorial Hospital jobsite and Aneco did the remaining phase that Glebe had originally been obligated to perform under its contract with Centex-Rodgers. Aneco also hired nine employees who had formerly worked for Glebe including Lowdermilk and Drummond. Aneco also hired Mario Garcia who had been Glebe's vice president but he had not been on the Memorial Hospital project. Additionally, Aneco used 2 of their own employees on this project for a total complement of 11 employees. The former Glebe employees were hired to maintain continuity on the job and were paid the same wages and worked the same hours as they had for Glebe. At the time it was performing work on the Memorial Hospital project, Aneco had a total complement of 315 employees.

The General Counsel also called Mario Garcia who worked for Aneco from September 1989 until March 1990 and who was formerly vice president of Glebe before that. Garcia testified that Glebe was performing a multiphase job of electrical work at the Memorial Hospital until the last week of August or first week of September 1989. Garcia served as the project manager for Aneco. He handled the Memorial Hospital project for Aneco about 2 months and after that he did estimating for Aneco in Miami. Glebe was unable to finish the Memorial Hospital contract and closed its business. Glebe had two trailers on the Memorial Hospital jobsite which were later used by Aneco after Glebe left. The employees of Aneco who were on the Memorial Hospital jobsite did the same type of work (electrical installation) that the Glebe employees did when they were employed by Glebe. Garcia was never physically located at the Memorial Hospital jobsite. Glebe negotiated a change order with Centex eliminating the final phase from the contract and there were then no other contracts outstanding held by Glebe. Glebe went out of business and with the last paycheck in August, the employees were terminated. The former Glebe employees who were hired by Aneco were required to fill out applications and be interviewed in Miami before being hired by Aneco. Centex-Rodgers retained $30,000 for any warranty work that might be required on any of the phases Glebe had performed. Under the terms of the agreement's deductive change order, Garcia was to represent both Glebe and Aneco in its dealings with Centex Rodgers. Glebe left two trailers at the Memorial Hospital jobsite as they were ''in pretty bad shape so, really, there was no value, there was no resale value. It's basically you use them on the job and then you junk. It would cost more to move them, probably, to another location than to try to sell them.'' Glebe abandoned those trailers. Aneco did not acquire or receive any property of Glebe.

The Respondent called Robert Taylor, Aneco's president, who testified that Aneco had approximately 315 employees and 5 offices in the State of Florida where it does business as an electrical contractor. Nine of Glebe's former employees were hired at the Memorial Hospital construction site and two of Glebe's former employees were hired for a project in Seminole County, Florida. Aneco did not purchase any assets from or pay any money to Glebe and has never had any business relationship with Glebe prior to or after Aneco entered into the contract with Centex-Rodgers to do the electrical work for phase 5 of the Memorial Hospital project. Aneco was not required to obtain a bond for the Memorial Hospital project by Centex-Rodgers as it would not agree to put its bonding company at risk for work performed by Glebe. Aneco undertook no responsibility for work performed by Glebe. Aneco did not receive any business records of Glebe. Although Aneco used the two trailers which had been abandoned at the Memorial Hospital by Glebe, it had no agreement to do so with Glebe and has no claim to an ownership interest in the trailers.

Analysis

A. *The Alleged Unfair Labor Practices*

I credit the entire testimony of the General Counsel's witnesses concerning the unfair labor practices committed by Respondent Glebe all of which was unrebutted as Glebe did not answer the amended complaint or appear or participate at the hearing. Respondent Aneco disclaims knowledge of the unfair labor practices and defends solely on the successorship issue which will be treated hereinafter. I, accordingly, find that the General Counsel has established a prima facie case of violations of Section 8(a)(1) and (3) of the Act by Respondent Glebe which has been unrebutted and that Respondent Glebe violated the Act as follows:

1. Respondent Glebe violated Section 8(a)(1) of the Act by the interrogation of its employee Perry by its Supervisor Thomas Lowdermilk on March 28 and 29, 1989, about his union sentiments and by Lowdermilk's statement to Perry on March 29, 1989, that Glebe would pack the unit if the employees attempted to obtain an election and that Glebe would never sign a union contract, thus threatening the employees with the futility of supporting the Union and by Lowdermilk's question to Perry of March 31, as to why he did not quit if he did not like his job after Perry and other

employees wore union T-shirts on the job, which constituted an unspecified threat of reprisal because of Perry's support for the Union. It further violated Section 8(a)(1) of the Act by Lowdermilk's inquiry of Perry on April 3, 1989, as to why he did not quit because everyone was getting sick and tired of the things going on on the job as this constituted another unspecified threat of reprisal in retaliation for Perry's support of the Union.

2. Respondent violated Section 8(a)(1) of the Act by the taking of photographs by Superintendent Drummond of the employees' work and his comments that there was shoddy workmanship which incident occurred on April 3, 1989, and which actions and comments I find were in retaliation for the employees' support of the Union.

3. Respondent violated Section 8(a)(1) of the Act by Lowdermilk's inquiry of employee Daniel Reuther on April 28 whether he was in the Union and his statement that Glebe would never go union, thus indicating the futility of the employee's support of the Union. Respondent violated Section 8(a)(1) of the Act by Lowdermilk's inquiry of Reuther on April 29 whether he was in the Union and his statement that Glebe would never be in the Union also indicating the futility of Reuther's support for the Union.

4. Respondent violated Section 8(a)(1) of the Act by the inquiry made by Superintendent Drummond on April 4, 1989, to employee Joshua Raver whether he could prove he was not in the Union, and by Owner Bourassa's statement of April 4, 1989, ''I don't know who is or who isn't in the Union. I had to get rid of you all,'' both of which comments by Drummond and Bourassa immediately following the discharge of Raver along with the three other employees after Raver protested that he was unfairly discharged because he had not been a union supporter. The initial inquiry by Drummond constituted unlawful interrogation in which the statement by Bourassa constituted an unlawful threat as employees had been discharged because of their union membership.

5. Respondent violated Section 8(a)(3) and (1) of the Act by its discharge of employees Daniel A. Reuther, George C. Hopper, Stephen A. Perry, and Joshua A. Raver Jr. because of the employees' support of the Union.

B. *The Successorship Issue*

The General Counsel contends that Aneco is a successor of Glebe and that a finding of the foregoing violations should accordingly, also be made against Aneco and that Aneco should be required to remedy the aforesaid violations. The Respondent defends on the ground that it is not a successor and that even if it is found to be a successor, it should not be required to remedy the violation.

Glebe was a subcontractor performing the electrical work on the Memorial Hospital with the general contractor Centex-Rodgers, but Glebe was losing money and decided to go out of business. Its representatives contacted Aneco in an attempt to sell its business to Glebe but Aneco refused. At the time Glebe had one or two other jobs in the Florida area. Glebe and Centex-Rodgers agreed to segregate out the final phase of the electrical work from the contract. Aneco and Centex-Rodgers agreed that Aneco would finish the final phase of the work and entered into an agreement concerning this which mentions an unwritten or tacit agreement between Glebe and Aneco to this effect. At one point in the negotiations between Aneco and Centex-Rodgers, Centex-Rodgers sent Aneco an agreement assigning Glebe's contract to Aneco but Aneco refused to accept the assignment. Aneco also refused to accept liability for any work performed by Glebe, and Centex-Rodgers retained $30,000 due Glebe under the contract for the completed work to cover any warranty work that Glebe could no longer perform as it was going out of business. It is undisputed that the Union put Aneco on notice of the unfair labor practice charges filed against Glebe. Aneco's officials inquired of Glebe concerning these charges and relied on the assurance of Glebe's officials that the charges were being taken care of but Aneco did not otherwise attempt to protect itself against any liability therefor. Glebe went out of business approximately Labor Day or early September 1989 and Aneco took over the final phase of the contract at that time. There was no purchase agreement or any contract of any kind entered into between Glebe and Aneco and Aneco did not acquire any assets of Glebe but did use two trailers as an office and supply storage which trailers had been abandoned by Glebe on the jobsite because of their poor condition and the conclusion that it would cost more to move them than it was worth. Aneco had a total complement of over 300 employees in September 1989. It hired 11 employees to perform the Memorial Hospital job, 7 of whom were the former employees of Glebe on the jobsite and Glebe's project superintendent, Drummond, and foreman, Lowdermilk. It also hired Glebe's former vice president in its Miami operations. It is undisputed that Aneco performed the same type of work as Glebe had performed and that it paid the employees hired to do this work the same or similar wages and benefits as had Glebe.

Based on the foregoing, the General Counsel contends that Aneco is a successor to Respondent, and as such, is liable to remedy Glebe's unfair labor practices under *Golden State Bottling v. NLRB*, 414 U.S. 168 (1973), in which the Supreme Court adopted the Board's decision in *Perma Vinyl Corp*., 164 NLRB 968 (1967), enfd. sub nom. *United States Pipe Co. v. NLRB*, 398 F.2d 544 (5th Cir. 1968), which held that an employer acquiring a business with knowledge of the predecessor's unfair labor practices that continues operating the business ''without interruption or substantial change'' was liable to remedy the predecessor's Section 8(a)(1) and (3) violations. In determining whether there is ''substantial continuity,'' the Board considers the continuity of the operation of the business (i.e., hiatus or not and if so was it significant), plant, work force, jobs, ''working conditions, supervisors, machinery and equipment, methods of production, products or services and customers,'' citing *Aircraft Magnesium*, 265 NLRB 1344, 1345 (1982), enfd. 730 F.2d 767 (9th Cir. 1984), cited in *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27, 43 (1987); *Great Lakes Chemical Corp*., 280 NLRB 1131, 1132 (1986).

Aneco argues that it is not a *Golden State* successor as it made no purchase of any kind from Glebe and received no assets from Glebe and rejected an assignment of Glebe's subcontract which had been requested by Centex-Rodgers. Aneco also asserts that it hired only 10 former employees of Glebe which had an average of 35 employees when it went out of business whereas Aneco had a total of 315 employees at the time. Aneco further argues that since there was no purchase of Glebe or its assets by Aneco. Aneco was unable to reflect in the price paid for the business, the potential liability for remedying the unfair labor practices as the Court

noted the employer could have done in *Golden State*. Aneco argues further there was no business of Glebe to acquire and that it did not have specific knowledge of Glebe's unfair labor practices. It also argues that whereas in *Golden State* the employees continued to work in the plant, in the instant case construction work is involved and such work is project to project and phase to phase within a project. It also argues that there was no evidence that the former Glebe employees were not fully aware they were working under a new separate contractor and that public policy would not have been better served if the contractor and the hospital had been left dangling in the wind with unfinished hospital construction or if the former employees of Glebe had been denied rehire because of Aneco's desire to protect itself from successorship status. Aneco also attempts to distinguish the Supreme Court's decision in *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), in which *Burns* won a contract to supply security services to Lockheed from Wackenhut Corp. and wherein *Burns* hired 27 of Wackenhut's former employees but refused to recognize the Union and to honor the contract signed by the Union and Wackenhut, and in which the Court held that *Burns* could be required to bargain with the Union but held *Burns* could not be held to the terms of a contract to which it had never agreed. Aneco argues that in the *Burns'* case the Union was certified unlike the instant case. It further argues that the *Burns* case demonstrates that the Board's authority to impose a remedy does not extend as far as that sought by the General Counsel in the instant case, citing *Burns* at 286:

> Here there was no merger or sale of assets, and there were no dealings whatsoever between Wackenhut and Burns. . . . Burns purchased nothing from Wackenhut and became liable for none of its financial obligations. *Burns merely hired enough of Wackenhut's employees to require it to bargain with the Union as commanded (by § 8a(5) and § 9(a)). But this consideration is a wholly insufficient basis for implying either in fact or in law that Burns has agreed or must be held to have agreed to honor Wackenhut's collective bargaining contract.* [Emphasis added.]

Aneco further relies on *Howard Johnson Co. v. Detroit Joint Board*, 417 U.S. 249 (1974), in which a subsequent employer was held to have no duty to honor the arbitration provisions of a prior contract based on the *Burns* rule that substantive duties could not be enforced on a ''successor'' under the circumstances.''

The General Counsel relies on *Perma Vinyl*, supra, in which the Board held the offending employer and its successor (by reason of a purchase) liable for remedying the predecessor's unfair labor practices by reinstating the discriminatees and making them whole for any loss of pay since the date it succeeded to the predecessor's business and wherein the Board stated at 969:

> Especially in need of help, it seems to us, are the employee victims of unfair labor practices who, because of their unlawful discharge, are now without meaningful remedy when title to the employing business operations changes hands.
>
> We believe that the Board is empowered to require some effective action in the matter of remedying unfair labor practices and
>
> We are persuaded that one who acquires and operates a business of an employer found guilty of unfair labor practices in basically unchanged form under circumstances which charged him with notice of unfair labor practice charges against his predecessor should be held responsible for remedying his predecessor's unlawful conduct.

The Board went on to state in *Perma Vinyl* that the bona fide purchaser became the beneficiary of the predecessor's unfair labor practices and that his potential liability could be protected in the price he pays when acquiring the business. See, also, *Bell Co*., 243 NLRB 977 (1979), in which successorship was found by the Board where the new employer succeeded to the business with knowledge of the predecessor's unfair labor practices and *Aircraft Magnesium*, supra, in which the Board set out the traditional criteria for the test of substantial continuity as follows:

> (1) Business operations, (2) plant, (3) work force, (4) jobs and working conditions, (5) supervisors, (6) machinery, equipment and methods of production, and (7) product or services.

In *Am-Del-Co*., 234 NLRB 1040 (1978), cited by the General Counsel, relying on the Board's decision in *Merchants Home Delivery Service*, 230 NLRB 290 (1977), the administrative law judge found *Merchants* to be a successor to *Am-Del's* owner operator delivery contract with Penney and that *Merchants* had knowledge of unfair labor practice litigation involving its predecessor and was thus obligated to offer reinstatement upon application to employees discriminatorily laid off by *Am-Del*. In the *Am-Del* case, as in the instant case, there was no contract or purchase of assets between *Merchants* and *Am-Del* but the Board nonetheless found *Merchants* to be a successor. In her decision, the administrative law judge noted at footnote 12 that although *Golden State* had involved a bona fide purchaser successor, ''the Board has indicated that the principle also applies where the successor is a replacement with no direct relationship or dealings with the predecessor.'' Citing *Mansion House Center Management Corp*., 208 NLRB 684 (1974); *Eastman Kodak Co*., 194 NLRB 220 (1971).

After a review of all the foregoing, I find principally in reliance on *Golden State*, *Perma Vinyl*, *Burns*, and specifically on *Am-Del-Co., Inc*. which involved a similar factual situation to the instant case and the other cases cited by the General Counsel that the facts in the instant case support a finding that Aneco is a successor to Glebe in this case. In the instant case, I find Aneco was clearly on notice of the unfair labor practice charges against Glebe and did not elect to investigate further or specifically to protect itself from potential liability therefor although it clearly could have done so. In virtually all other aspects than the purchase aspect, Aneco meets the criteria set out in the *Aircraft Magnesium* case and as *Am-Del-Co*. holds, it is not essential to be a purchaser to be held a successor. Accordingly, I find Aneco is a successor to Glebe and shall order the appropriate remedy in accordance with *Am-Del-Co., Inc*. See also *Capital Steel & Iron Co*., 299 NLRB 484, 485 (1990), in which the Board

recently reiterated the Supreme Court's position in *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987), that the criteria demonstrating ''substantial continuity'' are ''to be assessed primarily from the perspective of the employees.''

CONCLUSIONS OF LAW

1. Respondent Glebe Electric, Inc. is an employer within the meaning of Section 2(6) and (7) of the Act.

2. Respondent Aneco Company is a successor to Glebe Electric, Inc. and an employer within the meaning of Section 2(6) and (7) of the Act.

3. The International Brotherhood of Electrical Workers, Local Union 756, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

4. Respondent Glebe Electric, Inc. violated Section 8(a)(1) of the Act by its interrogation of its employees concerning their union membership and sympathies.

5. Respondent Glebe Electric, Inc. violated Section 8(a)(1) of the Act by its issuance of unspecified threats of reprisal and threats of futility of the employees support of the Union because of the employees engagement in protected concerted activities on behalf of the Union.

6. Respondent Glebe Electric, Inc. violated Section 8(a)(3) of the Act by the discharge of employees Daniel A. Reuther, George C. Hopper, Stephen A. Perry, and Joshua A. Raver Jr. because of their engagement in union activities.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent Glebe has violated Section 8(a)(1) and (3) of the Act, it shall be ordered to cease and desist therefrom, and to take certain affirmative actions, including the posting of an appropriate notice designed to effectuate the purposes of the Act. It shall also be ordered to rescind its discharge of its employees Daniel A. Reuther, George C. Hopper, Stephen A. Perry, and Joshua A. Raver Jr., offer them full reinstatement to their former positions or, if their former positions no longer exist, to substantially equivalent positions, expunge its files of any reference to the unlawful discharges and advise them in writing that said discharges will not be used in any adverse manner against them in any manner and make them whole for any loss of wages or benefits sustained by them since the date of their unlawful discharge with restoration of all seniority rights and privileges. All backpay and benefits shall be with interest and shall be computed in accord with *F. W. Woolworth Co.*, 90 NLRB 289 (1950). Interest shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[5] It is further recommended that Aneco Company as the successor of Glebe, Inc. shall be liable for all of the foregoing remedy jointly and severally with Glebe, Inc.

[Recommended Order omitted from publication.]

[5] Under *New Horizons*, interest is computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendments to 26 U.S.C. § 6621.